

December 10, 2018

United States Bankruptcy Court
Clerk's Office
300 Quarropas Street
White Plains, NY 10601

RutbergBreslow.com

Re: In re: Sears Holdings Corporation, et al.
Chapter 11 – Case No. 18-23538 (RDD)
Our File: Mary McCagg v. Kmart
Our File No: 17-212

Hudson Valley
3344 Route 9 North
Poughkeepsie, NY 12601
*please send all mail to the
Hudson Valley Office
tel: 845.486.0300
fax: 845.486.0270

Orange County
Middletown
tel: 845.566.4321

Catskills
Monticello
tel: 845.791.4321

Mohawk Valley
Utica
tel: 315.724.4321

Capital District
Albany
tel: 518.432.4321

Truth is Powerful

Dear Sir or Madam:

Enclosed for filing is movant's Notice of Motion for Relief from the Automatic Stay with accompanying Affirmation, together with our check in the amount of \$181.00, made payable to "Clerk, USBC, SDNY" for the filing fee of same.

Please note the return date is January 8, 2019.

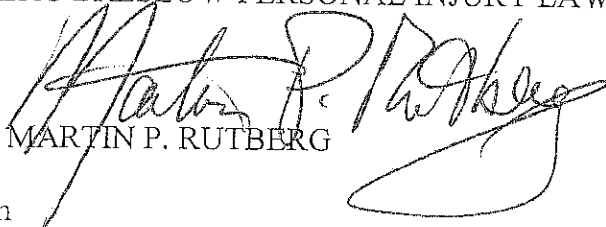
Please forward the enclosed motion to the judge for consideration. A self-addressed postage paid envelope is enclosed for the Court's decision.

Thank you.

Very truly yours,

RUTBERG BRESLOW PERSONAL INJURY LAW

By:


MARTIN P. RUTBERG

MPR/lh

Encls.

CC: with Enclosures
Garrett A. Fail, Esq.
Weil, Gotshal & Manges LLP

with Enclosures
Allen F. Light, Esq.
Barclay Damon, LLP

We Help Injured People and Their Families

Counsel: Marty Rutberg: *Partner* | Larry Breslow: *Partner*
Jennifer L. Langley | Gerald A. Vergilis: *Of Counsel*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SEARS HOLDINGS CORPORATION, *et al.*,

Debtors.
-----X

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Chapter 11

Case No. 18-23538 (RDD)

NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. §362(d)

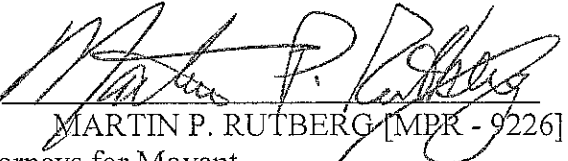
PLEASE TAKE NOTICE, that upon the annexed Affirmation of MARTIN P. RUTBERG, ESQ., sworn to the 10th day of December, 2018, and the prior proceedings had herein, MARY MCCAGG ("Movant"), will move the Court at the United States Bankruptcy Court located at One Bowling Green (Room 511), New York, New York on the 8th day of January, 2019 at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel may be heard, for an Order, pursuant to 11 U.S.C. §362(d), terminating and annulling the automatic stay to enable Movant to prosecute her complaint for personal injuries commenced in the New York Supreme Court for the County of Dutchess under Index No. 2018-50669 in which the debtor(s) KMART CORPORATION is a party defendant as more particularly described in the Summons and Complaint annexed hereto on the grounds that "cause" exists for such relief, together with such other and further relief as to this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 9006-1(b) of the Local Bankruptcy Rules, opposing affidavits and answering memoranda, if any, shall be served on the undersigned so as to ensure actual receipt not later than three (3) days before the return date.

Dated: Poughkeepsie, New York
December 10, 2018

Yours, etc.,

RUTBERG BRESLOW PERSONAL INJURY LAW

By: 
MARTIN P. RUTBERG [MPR - 9226]
Attorneys for Movant
3344 Route 9 North
Poughkeepsie, NY 12601
Tel: (845) 486-0300

TO: WEIL, GOTSHAL & MANGES LLP
Garrett A. Fail, Esq.
Attorneys for Debtors
767 Fifth Avenue
New York, NY 10153
Tel: (212) 310-8000

BARCLAY DAMON, LLP
Allen F. Light, Esq.
Attorneys for Defendant KMART
80 State Street
Albany, NY 12207
Tel: (518) 429-4290

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	:
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SEARS HOLDINGS CORPORATION, <i>et al.</i> ,	:
	:
Debtors.	:
-----X	

Chapter 11
Case No. 18-23538 (RDD)

**AFFIRMATION IN SUPPORT OF MOTION FOR RELIEF FROM
THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. §362(d)**

MARTIN P. RUTBERG, an attorney duly admitted to practice in the Courts of the State of New York and this Court respectfully affirms the truth of the following statements under penalty of perjury.

1. I am a principal with the law firm of Rutberg Breslow Personal Injury Law, attorneys for MARY MCCAGG ("Movant") in the above-captioned case and as such am fully familiar with the facts and circumstances of this motion.

2. I submit this Affirmation in support of Movant's motion pursuant to Bankruptcy Code §362(d) for relief from the automatic stay to enable Movant to prosecute its complaint for personal injuries commenced in the New York Supreme Court for the County of Dutchess under Index No. 2018-50669 in which the debtor KMART CORPORATION is party defendant (the "Lawsuit").

3. A copy of the Summons and Complaint in the "Lawsuit" is annexed hereto as **Exhibit "A"**.

4. The Lawsuit was commenced on March 14, 2018.

5. On or about October 15, 2018, the debtor SEARS HOLDINGS CORPORATION, *et al.*, filed a petition for relief under Chapter 11 of the Bankruptcy Code. That petition was assigned Case Number 18-23538.

6. Movant seeks relief from the automatic stay so that she can prosecute her claims for liability and, upon establishing liability against the Debtor/Defendant, have her claims liquidated and paid through insurance proceeds.

7. Movant only seeks relief to establish liability and liquidate her claims and will not seek to enforce any judgment as against property of the estate without further order of this Court.

8. It is respectfully submitted that for the reasons set forth herein, "cause" exists for the required relief from the automatic stay.

9. It is respectfully requested that this Court exercise its discretion in waiving the 10-day stay of relief from the automatic stay based upon the fact that the Movant will be unduly prejudiced by not being allowed to immediately proceed with her Lawsuit to establish liability against the debtor and liquidate her claims. The debtor should not be allowed to further benefit from their abuse of the bankruptcy process.

WHEREFORE, it is respectfully requested that this Court enter an Order.

(a) terminating and annulling the automatic stay to enable Movant to prosecute her claims in the Lawsuit to establish liability against the debtor and liquidate her claims;

(b) waiving the 10-day stay of the order granting relief from the automatic stay until the expiration of 10 days after the entry of the Order; and

(c) for such other and further relief as to the Court seems just and proper.

Dated: Poughkeepsie, New York
December 10, 2018

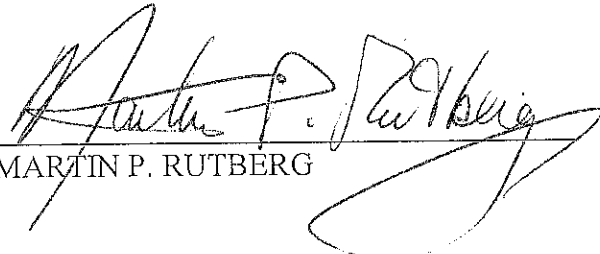

MARTIN P. RUTBERG

Exhibit A

FILED: DUTCHESS COUNTY

CLERK 03/14/2018 02:53

INDEX NO. 2018-50669

NYSCEF DOC. NO. 1

RECEIVED NYSCEF: 03/14/2018

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Index No.:

MARY MCCAGG,

Plaintiff designates
Dutchess County as the
place of trial.

Plaintiff,

The basis of the venue
is plaintiff's residence

-against-

SUMMONS

KMART,

Defendant.

Plaintiff resides at
8 Maple Grove Lane, Apt. 1
Poughkeepsie NY 12601
County of Dutchess.**TO THE ABOVE NAMED DEFENDANT:**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, upon the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded herein.

DATED: Poughkeepsie, New York
March 14, 2018

Yours, etc.

RUTBERG BRESLOW PERSONAL INJURY
LAWBy: JENNIFER L. LANGLEY
Attorneys for Plaintiff
3344 Route 9 North
Poughkeepsie, NY 12601
Tel.: (845) 486-0300

Defendant's address:

- Kmart, c/o CT Corporation System, 111 Eighth Ave., New York NY 10011
- Kmart, 635 Dutchess Turnpike, Poughkeepsie NY 12603

Notice: The nature of this action is personal injuries. The relief sought is monetary damages. Upon your failure to appear, judgment will be taken against you by default.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

-----X
MARY MCCAGG,

Index No.:

Plaintiff,

COMPLAINT

-against-

KMART,

Defendant.
-----X

Plaintiff, by her attorneys RUTBERG BRESLOW PERSONAL INJURY LAW, complaining
of the defendants respectfully shows to this Court and alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times relevant the plaintiff MARY MCCAGG was and is a resident of the
County of Dutchess and State of New York.
2. At all times relevant the defendant KMART was and is a foreign corporation
licensed to do business in the State of New York with a principal place of business located at
3333 Beverly Road, B2-130B, Hoffman Estates, Illinois 60179.
3. At all times relevant the defendant was the owner, possessor, leasee, occupant or
otherwise had control over certain premises known as Kmart located at 635 Dutchess Turnpike,
Poughkeepsie, New York 12603 which is a retail store.
4. The defendant had a duty to maintain said premises in reasonably safe condition
for persons therein.

5. On or about the 17th day of August, 2017, the said premises, due to the negligence of defendant, was in a condition which was dangerous for persons therein.

6. Defendant knew, or in the exercise of reasonable care should have known, of the dangerous condition of said premises.

7. On or about the 17th day of August, 2017, while the plaintiff was lawfully upon said premises, she was caused to fall due to the dangerous condition of said premises.

8. By reason of the defendant's negligence plaintiff suffered bodily injury and mental anguish and upon information and belief such injuries are permanent.

9. By reason of the defendant's negligence the plaintiff has been obliged to seek medical treatment and incur medical expenses.

10. The said injuries and damages were caused solely by the negligence of the defendant.

11. The plaintiff's damages exceed the jurisdictional limits of all lower courts.

WHEREFORE plaintiff demands judgment against the defendant on each cause of action in an amount commensurate with plaintiff's damages and for such other and further relief as to this court seems just and proper.

DATED: Poughkeepsie, New York
March 14, 2018

Yours, etc.

RUTBERG BRESLOW PERSONAL INJURY
LAW

By: 

JENNIFER L. LANGLEY
Attorneys for plaintiffs
3344 Route 9 North
Poughkeepsie, NY 12601
Tel.: (845) 486-0300

TO: Kmart
c/o CT Corporation System
111 Eighth Ave.
New York NY 10011


Kmart
635 Dutchess Turnpike
Poughkeepsie NY 12603

NOTICE

This law firm conducts its practice in compliance with the provisions of Uniform Rules Sections 130-1.1 and complies with the requirements of DR 1-103 and DR 1-104.

Yours, etc.

RUTBERG BRESLOW PERSONAL INJURY LAW

By: 
JENNIFER L. LANGLEY
3344 Route 9 North
Poughkeepsie, NY 12601
Tel. (845) 486-0300

STATE OF NEW YORK)
) ss.:
COUNTY OF DUTCHESS)

ELISABETH HANKINS, being duly sworn, deposes and says:

I am a clerk with the law office of Rutberg Breslow Personal Injury Law, attorneys for movant(s) and am over 18 years of age.

On the 10th day of December, 2018, I served a copy of the **Notice Of Motion For Relief From The Automatic Stay** upon the following parties whose name is hereinafter set forth by depositing a true copy of same in a securely enclosed wrapper, at the postal box located on Mansion Street in Poughkeepsie, New York, which box is under the exclusive custody and care of the United States Post Office, which copies are directed to said parties at the addresses set after their respective names, that being the address within the State designated by them for that purpose, to wit:

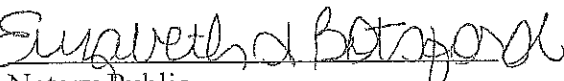
Name and address of Parties

TO: WEIL, GOTSHAL & MANGES LLP
Garrett A. Fail, Esq.
Attorneys for Debtors
767 Fifth Avenue
New York, NY 10153
Tel: (212) 310-8000

BARCLAY DAMON, LLP
Allen F. Light, Esq.
Attorneys for Defendant KMART
80 State Street
Albany, NY 12207
Tel: (518) 429-4290


ELISABETH HANKINS

Sworn to before me this
10th day of December, 2018.


Notary Public

Elizabeth A. Botsford
Notary Public, State of New York
No. 01B06108907
Qualified in Dutchess County
Commission Expires April 192020